

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALLAN THOMAS ROCKWELL,  
  
Plaintiff,  
  
v.  
  
TUOLUMNE COUNTY, et al.,  
  
Defendants.

Case No. 1:22-cv-00392-JLT-EPG

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT CLAIMS  
BROUGHT ON BEHALF OF MINOR  
PLAINTIFF G.A.R. BE DISMISSED

(ECF Nos. 5, 8)

FOURTEEN (14) DAY DEADLINE

Plaintiff Allan Thomas Rockwell (“Plaintiff”) is proceeding *pro se* in this action against Tuolumne County, Michael Choate, Denise Choate, and Melissa Brouhard. (See ECF Nos. 1, 5.) For the following reasons, the Court recommends that all claims brought on behalf of minor G.A.R. be dismissed without prejudice.

**I. BACKGROUND**

Plaintiff initially filed the complaint on April 4, 2022. (ECF No. 1.) On April 25, 2022, Plaintiff filed a First Amended Complaint indicating that the action is brought by Plaintiff and by G.A.R., a minor, proceeding *pro se*. (ECF No. 5.) On May 4, 2022, the Court issued an order for Plaintiff to show cause why G.A.R.’s claims should not be dismissed without prejudice because Plaintiff has no authority to proceed on his behalf. (ECF No. 8.)

On May 17, 2022, Plaintiff filed a response to the May 4, 2022 order to show cause, along with a motion for an extension of time to file a further response. (ECF Nos. 14, 15.) Plaintiff’s response explained that he was searching for counsel for G.A.R. and himself. (ECF No. 14.) And he stated that if he could not obtain counsel, “he will use FRCP 17 Next Friend rule to obtain

1 proper representation to enter an appearance for G.A.R.” (*Id.*)

2 On May 18, 2022, the Court granted Plaintiff an extension to June 30, 2022, to file a  
3 further response to the order to show cause. (ECF No. 17). However, the Court reiterated the  
4 discussion in the order to show cause—that G.A.R. must be represented by counsel if this action  
5 is to proceed on his or her behalf. (*Id.* at 2); *see Garcia v. City of Fresno*, 2017 WL 6383814, at  
6 \*4 (E.D. Cal. Dec. 14, 2017) (“It is established that a non-attorney parent must be represented by  
7 counsel in bringing an action on behalf of the child.”).

8 On May 31, 2022, Defendants Michael Choate and Denise Choate each filed objections to  
9 minor G.A.R. proceeding pro se through Plaintiff in this case. (ECF Nos. 20, 21.)

10 On June 29, 2022, Plaintiff filed a motion requesting that the Court grant him permission  
11 to represent minor G.A.R. or grant him an extension of time to respond to the order to show  
12 cause and filings from Defendants objecting to him representing G.A.R. (ECF No. 35.) The Court  
13 again reiterated that Plaintiff cannot pursue a claim on behalf minor G.A.R. absent counsel and  
14 would not permit Plaintiff proceed *pro se* and pursue a claim on behalf of G.A.R., nor would the  
15 Court grant Plaintiff an extension to file a reply to Defendants’ objections to him pursuing a claim  
16 on behalf of G.A.R. (ECF No. 38.) However, the Court granted Plaintiff an extension of time  
17 until July 21, 2022 to respond to the order to show cause. (*Id.*) On July 12, 2022, Defendants  
18 Michael Choate and Denise Choate filed further objections to Plaintiff representing minor G.A.R.  
(ECF Nos. 41, 42.)

19 Plaintiff has not filed any further response to the Court’s order to show cause and the time  
20 to do so has expired. Thus, for the reasons discussed below, the Court will recommend that minor  
21 G.A.R.’s claims be dismissed without prejudice.

## 22 II. DISCUSSION

23 The Ninth Circuit has determined that although a non-attorney may appear *pro se* in his or  
24 her own behalf, that privilege is personal to them and they have no authority to appear as an  
25 attorney for others than themselves. *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697  
26 (9th Cir. 1987); *Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008). “[A] parent or  
27 guardian cannot bring an action on behalf of a minor child without retaining a lawyer.” *Johns v.*  
28 *County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997); *see also Wilson v. Raye*, 2020 WL

1 1492662, at \*2 (E.D. Cal. Mar. 27, 2020) (finding that a *pro se* plaintiff could not bring an action  
 2 on behalf of a minor); *Giorgis v. Fetter*, , 2014 WL 12694301, at \*1 (D. Ariz. Dec. 22, 2014)  
 3 (accord).

4 The First Amended Complaint states that it brings claims on behalf of G.A.R., a minor.  
 5 (ECF No. 5.) However, Plaintiff is proceeding *pro se* and counsel has not appeared on G.A.R.'s  
 6 behalf. As the Court has repeatedly explained to Plaintiff, G.A.R. is a minor and must be  
 7 represented by counsel if this action is to proceed on his or her behalf. Plaintiff, a non-attorney  
 8 proceeding *pro se*, does not have authority to appear on behalf of others, including G.A.R.  
 9 Further, the Court has provided Plaintiff ample opportunity to secure counsel for G.A.R. and  
 10 there has been no attorney appearance entered on G.A.R.'s behalf. Thus, the Court recommends  
 11 that G.A.R.'s claims be dismissed without prejudice.

### 12 **III. CONCLUSION AND RECOMMENDATION**

13 In light of the foregoing, IT IS HEREBY RECOMMENDED that all claims brought on  
 14 behalf of minor G.A.R. be dismissed without prejudice.

15 These findings and recommendations will be submitted to the United States district judge  
 16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
 17 (14) days after being served with these findings and recommendations, any party may file written  
 18 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
 19 Findings and Recommendations." Any reply to the objections shall be served and filed within  
 20 fourteen (14) days after service of the objections. The parties are advised that failure to file  
 21 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*  
 22 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394  
 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24  
 25 Dated: July 29, 2022

26 /s/ Eric P. Giorgis  
 27 UNITED STATES MAGISTRATE JUDGE  
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